

Message Text

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SUBJ: MALAYSIA'S RECORD ON HUMAN RIGHTS

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1. TERMS OF REFERENCE. THIS MESSAGE RESPONDS TO REF A REQUEST
FOR UPDATED REPORT ON SIGNIFICANT HUMAN RIGHTS DEVELOPMENTS IN
MALAYSIA. A MORE DETAILED AIRGRAM REPORTING CONVEYING RELEVANT
DOCUMENTS WILL BE DISPATCHED SHORTLY. THIS MESSAGE IS
INTENDED TO BE READ IN CONJUNCTION WITH REFS B AND D WHICH
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PROVIDE BASIC BACKGROUND ON THE ISSUE. OUR OBJECTIVES IN THIS

MESSAGE ARE TO (A) SUMMARIZE IMPORTANT ORDINARY LEGAL GUARANTEES FOR HUMAN RIGHTS AND "FUNDAMENTAL LIBERTIES;" (B) HIGHLIGHT PROBLEM AREAS AND DISCERNIBLE TRENDS, BOTH POSITIVE AND NEGATIVE; AND (C) CITE THE IMPLICATIONS OF THE FOREGOING, AS WE PERCEIVE THEM, FOR U.S. POLICY.

2. SUMMARY AND BASIC CONCLUSIONS. BY THE ABSOLUTE STANDARDS SET BY THE UNIVERSAL DECLARATION OF HUMAN RIGHTS (UDHR) MALAYSIA'S PERFORMANCE IN A NUMBER OF AREAS OF PROTECTION OF BASIC HUMAN RIGHTS IS INADEQUATE, AND IN SEVERAL AREAS IS SERIOUSLY DEFICIENT. THE LATTER STEMS PRINCIPALLY FROM APPLICATION OF THE 1960 INTERNAL SECURITY ACT (ISA) GRANTING THE GOM BROAD POWERS OF DETENTION WITHOUT TRIAL (IN ACCORD WITH ARTICLE 149 OF THE FEDERAL CONSTITUTION), AND "EMERGENCY" LAWS CURRENTLY IN EFFECT (IN ACCORD WITH ARTICLE 150 OF THE FEDERAL CONSTITUTION THAT AUTHORIZE RESTRICTIONS UPON OR SUSPENSION OF "FUNDAMENTAL LIBERTIES" GUARANTEED ELSEWHERE IN THE CONSTITUTION). SINCE SEPT 1975 NEW LEGISLATION HAS TENDED TO FURTHER ERODE SAFEGUARDS TO PROTECTION OF HUMAN RIGHTS. NONETHELESS, AS WE CONCLUDED LAST YEAR (PARA 9, REF B) DESPITE SHORTCOMINGS IN OBSERVANCE OF HUMAN RIGHTS, INCLUDING SOME SERIOUS VIOLATIONS, FROM STANDARDS SET BY UDHR AND THOSE PREVAILING IN THE UNITED STATES, AN OBJECTIVE APPRAISAL WILL STILL SHOW THE GOM TO BE MORE HUMANE, LIBERAL AND FAIR IN ITS APPROACH TO HUMAN RIGHTS THAN ALL BUT A HANDFUL OF NON-WESTERN GOVERNMENTS.

3. MALAYSIA IS A PARTICIPATORY PARLIAMENTARY DEMOCRACY WITH AN IMPRESSIVELY INDEPENDENT JUDICIARY. THE FORMER REFLECTS THE PUBLIC WILL AND PROVIDES A FORUM (ALBEIT WITH QUALIFICATIONS) FOR DISSENT; THE LATTER SERVES AS A CHECK AGAINST GROSS OR REPREHENSIBLE VIOLATIONS OF HUMAN RIGHTS. ALTHOUGH EMERGENCY REGULATIONS AND OTHER LAWS CIRCUMSCRIBE FUNDAMENTAL HUMAN RIGHTS, MITIGATING FACTORS EXIST IN THE FORM OF A TANGIBLE THREAT TO THE BODY POLITIC POSED BY ARMED COMMUNIST ELEMENTS AND IN CONCERTED GOM EFFORTS TO MAINTAIN FRAGILE EQUILIBRIUM BETWEEN COMPETING RACIAL GROUPS. WHAT APPEARED AT THE TIME OF LAST YEAR'S REPORT TO BE A TREND TOWARD APPLICATION OF BROAD EMERGENCY LIMITED OFFICIAL USE

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POWERS TO REPRESS POLITICAL OPPONENTS NOW HAS EASED AS EVIDENCED BY IMPROVEMENT OF HUMAN RIGHTS ENVIRONMENT IN STATE OF SABAH AND RELEASE OF OPPOSITION POLITICAL FIGURE DATUK JAMES WONG FROM DETENTION (KL 0797, DTB 120940Z FEB 76). LACK OF ATTENTION TO MALAYSIA BY INTERNATIONAL BODIES CONCERNED WITH HUMAN RIGHTS OBSERVANCE CONTINUES TO SUGGEST THAT VIOLATIONS HERE ARE NEITHER AS FLAGRANT NOR AS WIDESPREAD AS ELSEWHERE.

4. NONETHELESS, THERE ARE AREAS WHERE THE USG MAY BE DRAWN INTO MALAYSIAN HUMAN RIGHTS QUESTIONS, FOR EXAMPLE, IN THE AREAS OF PROSECUTION BY MALAYSIA OF NARCOTICS OFFENDERS WHO CAN BE DETAINED WITHOUT TRIAL FOR UP TO TWO YEARS UNDER EMERGENCY ORDINANCES, OR CONCEIVABLY, BY EXTRADITION REQUESTS BY GOM UNDER BROADLY DEFINED "SECURITY OFFENSE" CATEGORIES, PERHAPS THROUGH RECENTLY ENACTED LEGISLATION INCORPORATING QUESTIONABLE PRINCIPLE OF EXTRA-TERRITORIAL APPLICATION OF MALAYSIAN LAWS TO COVER OFFENSES COMMITTED ABROAD BY MALAYSIAN CITIZENS OR PERMANENT RESIDENTS. QUESTIONS ALREADY HAS ARISEN OF PARTICIPATION BY NON-DIPLOMATIC USG PERSONNEL AND PRIVATE U.S. CITIZENS IN MANDATORY NEIGHBORHOOD SECURITY PATROLS UNDER NEW "RUKUN TETANGGA" OR "COMMUNITY SELF-RELIANCE REGULATIONS" (KL 1438, NOTAL), WHICH BY EXPOSING FOREIGN RESIDENTS TO RISK OF PHYSICAL HARM CONSEQUENT TO PATROL DUTIES HAS CLEAR HUMAN RIGHTS IMPLICATIONS. SHOULD THE HUMAN RIGHTS SITUATION IN GENERAL SIGNIFICANTLY DETERIORATE AND/OR INTERNATIONAL ORGANIZATIONS SUDDENLY BECOME ATTENTIVE TO MALAYSIA, THE U.S. MIGHT BE OBLIGED TO COMMENT ON THE STATUS OF HUMAN RIGHTS HERE. TO DATE, THE EMBASSY'S POSTURE HAS BEEN TO MAINTAIN A WATCHING BRIEF OVER GENERAL ISSUES OF HUMAN RIGHTS SIGNIFICANCE, REPORTING DEVELOPMENTS ON A CONTINUING BASIS, OBSERVING IMPORTANT TRIALS, AND, AS APPROPRIATE, EXPRESSING OUR VIEWS WITH FORCEFULNESS AND CANDOR IN CONVERSATIONS TOUCHING ON HUMAN RIGHTS ISSUES. WHERE SPECIFIC DEVELOPMENTS AFFECT AMERICAN CITIZENS WE WILL CONTINUE TO ASSERT OURSELVES TO THE EXTENT NECESSARY TO ENSURE THE AMERICANS ACCUSED OF VIOLATING MALAYSIAN LAW WILL BE ACCORDED FAIR AND HUMANE TREATMENT IN ACCORDANCE WITH ACCEPTED STANDARDS OF DUE PROCESS, CONDITIONS OF DETENTION, ETC. A MORE INTERVENTIONIST POSTURE ON GENERAL HUMAN RIGHTS LIMITED OFFICIAL USE

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QUESTIONS FOR THE FOREGOING REASONS IS NOT, HOWEVER, IN OUR OPINION WARRANTED BY CURRENT CONDITIONS AND EVEN IF IT WERE, OUR LEVERAGE WITH THE GOM IS LIMITED. MALAYSIA IS NOT A RECIPIENT OF ECONOMIC AID AND HAS RECEIVED SECURITY ASSISTANCE ONLY IN THE FORM OF RELATIVELY SMALL QUANTITIES OF GRANT OFFICER TRAINING IN THE U.S. AND MODEST LEVELS OF CREDITS FOR MILITARY PURCHASES UNDER THE FMS PROGRAM. (MALAYSIA MORE APPROPRIATELY SHOULD HAVE BEEN LISTED UNDER CATEGORY 1, FMS CREDIT RECIPIENT, IN PARA 14-B OF REF A.) UNDERHILL

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